MELVIN J. YOUNG

IBLA 94-353 Decided May 29, 1996

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring mining claims abandoned and void. UMC 204618 through UMC 204620.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   Where a claimant timely files a Certification of Exemption from Payment of Rental Fee for the assessment year ending on Sept. 1, 1993, but fails to file, by Dec. 30, 1993, an affidavit of assessment work for the 1993 assessment year as required by sec. 314 of FLPMA and implementing regulations, his claims are properly declared abandoned and void.

APPEARANCES: Melvin J. Young, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Melvin J. Young has appealed from the February 24, 1994, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the Deanna I, II, and III mining claims (UMC 204618 through UMC 204620) abandoned and void because no copy of affidavit of assessment work was filed for the 1993 assessment year.

On August 23, 1993, appellant timely filed with BLM a "Certificate of Exemption from Payment of Rental Fee" covering the three claims for the assessment year running from September 1, 1992, through September 1, 1993. 1/ The Act of October 5, 1992 (the Act), P.L. 102-381, 106 Stat. 1374, provides that

> for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements

1/ A "Certificate of Exemption" for the assessment year running from Sept. 1, 1993, through Sept. 1, 1994, was also filed.

> contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c) [(1994)]), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993, in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378.

Implementing Departmental regulations provided as follows:

> Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of $100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of $200.

43 CFR 3833.1-5(b) (1993).

The only exemption provided from this rental requirement is the so-called "small miner exemption," available to claimants holding 10 or fewer claims on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). Washburn Mining Co., 133 IBLA 294, 296 (1995). The regulations require that a claimant must apply for the small miner exemption by filing separate certificates of exemption on or before August 31, 1993, supporting the claimed exemption for each assessment year claimed. 43 CFR 3833.1-7(d) (1993). That regulation provides, "the small miner shall file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year a small miner exemption is claimed." Appellant timely filed his certification of exemption, and we shall presume that he was entitled to an exemption.

BLM's decision declared the claims abandoned and void because, even though the certificates of exemption had been filed, appellant had not filed an affidavit of assessment work for the 1993 assessment year as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (a) and (c) (1994), and implementing regulations, 43 CFR 3833.2-2.

In his notice of appeal/statement of reasons, appellant asserts that he performed assessment work but acknowledges that he did not send a copy of an affidavit in because he understood that it was not required. Appellant also states that he was told at the BLM State Office nothing further was required. Appellant refers to 43 CFR 3833.0-3(e) (1993) which provides:

> (e) The Act of October 5, 1992 * * * requires an annual rental fee of $100 to be paid to the proper Office of the Bureau

> of Land Management for each nonexempt mining claim, mill site or tunnel site located or held under section 314(b) of FLPMA for the assessment years ending in 1993 and 1994. With certain exceptions, this rental fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28-28e and section 314(a)(1) of FLPMA. [Emphasis added.]

The Act provided that those claimants who qualify for the small miner exemption for the 1993 fiscal year may elect to either pay the claim rental for the assessment year ending at noon on September 1, 1993, or do the assessment work required by the Mining Law of 1872, 30 U.S.C. §§ 28-28e (1994), and meet the filing requirements of section 314(a) of FLPMA. Because the language of this provision of the Act governs this appeal, we set it forth below:

> [F]or fiscal year 1993, each claimant * * * that is producing under a valid notice or plan of operation not less than $1,500 and not more than $800,000 in gross revenues per year as certified by the claimant from ten or fewer claims * * * may elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872 (30 U.S.C. 28-28e) and meet the filing requirements of FLPMA (43 U.S.C. 1744 (a) and (c)) on such ten or fewer claims and certify the performance of such assessment work to the Secretary by August 31, 1993. [Emphasis added.]

[1] In this case, instead of paying the rental fee, appellant chose the alternative of claiming the small miner exemption. Having chosen that alternative, he was required to comply with 43 CFR 3833.1-7(a) (1993), which expressly provided that "[t]he affidavit of assessment work performed by a small miner claiming a rental fee exemption shall be filed with the proper State Office of the BLM pursuant to" 43 CFR 3833.2-4, the regulation requiring annual filing of copies of proofs of labor. Thus, for the assessment year ending on September 1, 1993, appellant was required to perform assessment work and to file an affidavit of assessment work "on or before December 30, 1993." 43 CFR 3833.1-7(b)(1) (1993). In absence of this filing, appellant's claims were properly declared abandoned and void. 43 CFR 3833.4(a)(1) (1993). Lee Jesse Peterson, 133 IBLA 381, 384 (1995).

As we held in Peterson:

> The Act and implementing regulations make clear that in lieu of paying the rental fee, a miner claiming the exemption must file the affidavit of assessment work performed with the proper state office of BLM on or before December 30. Having properly filed the certification of exemption from payment of the rental fees otherwise required by the Act, [claimant] was responsible for performing the assessment work required by the Mining Law of 1872, 30 U.S.C. §§ 28-28e (1988), and for meeting the filing requirements of section 314 of FLPMA, 43 U.S.C. § 1744(a) and

> (c) (1988). 106 Stat. 1378; 43 CFR 3833.1-7(a), (b), and (d). Section 314(c) of FLPMA provides, inter alia, that failure to file evidence of annual assessment work or a notice of intention to hold "shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner."

Lee Jesse Peterson, 133 IBLA at 384; see also Dale J. LaCrone, 135 IBLA 203, 205-06 (1996). The responsibility for complying with the recordation requirements of FLPMA rests with the mining claimant, and failure to file the proper documents in the proper BLM offices within the time periods prescribed, in and of itself, causes the claim to be abandoned and void.

As to appellant's assertion that he was advised by a BLM employee that he had met filing requirements when he had filed his certifications of exemption, it is a well-settled principle that reliance on erroneous or incomplete information supplied by BLM employees cannot create rights not authorized by law. John Watson, 113 IBLA 235, 238 (1990); See Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Raymond T. Duncan, 96 IBLA 352 (1987); see 43 CFR 1810.3(c).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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David L. Hughes
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge